80-1176

Supreme Court, U. S.
FILED
JAN 8 1981
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1980
No. _____

Charles E. Block ..... *Petitioner*

V.

State of Arkansas ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

HAROLD L. HALL
300 Spring Building - Suite 415
Little Rock, Arkansas 72201
(501) 372-4885

Attorney for Petitioner

QUESTION PRESENTED

1. Whether in absence of exigent circumstances the warrantless, non-consensual entry into a person's home for the purpose of arresting him violates his Fourth and Fourteenth Amendment rights and compel him to stand trial.

SUBJECT INDEX

Page

OPINION BELOW 1

JURISDICTION 1

QUESTION PRESENTED 2

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASON FOR GRANTING THE WRIT 4

1. The decision of the Arkansas Supreme Court that a citizen must stand trial even though he was illegally arrested in his home without a warrant of arrest in absence of exigent circumstances, fingerprinted and photographed for the purpose of completing the investigation by the officers, violated the citizen's rights under the Consituation of the United States 4

CONCLUSION 10

APPENDIX "A" ... OPINION BELOW 11

APPENDIX "B" ... PETITION FOR REHEARING 13

APPENDIX "C" ... JUDGMENT BELOW 15

APPENDIX "D" ... NOTICE OF PETITION FOR WRIT OF CERTIORARI 16

TABLE OF AUTHORITIES

CASES Page

Payton and Reddick v. New York, 445 U.S. 573, 100 S.Ct. 1371 6

U. S. v. Reed, 572 F. 2d 412 6

U. S. v. Houle, 603 F. 2d 1297 6

Haynes v. State, 269 Ark. 506, 602 S.W.2d 599 7

United States v. United States District Court, 407 U.S. 297 7

McDonald v. United States, 335 U.S. 451 7

United States v. Watson, 423 U.S. 411 9

OTHER AUTHORITIES

United States Constitution

Fourth Amendment 2
Fourteenth Amendment 2

28 U.S.C. 1257 (3) 2

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1980

No. _____

Charles E. Block ..... *Petitioner*

V.

State of Arkansas ..... *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

The Petitioner, Charles E. Block, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of Arkansas, entered in the above entitled case on November 10, 1980.

OPINION BELOW

The opinion of the Supreme Court of Arkansas is reported at 270 Ark. Adv. Sh. 671, _____ S.W.2d _____. It is responded in Appendix "A" to this Petition.

JURISDICTION

The opinion of the Supreme Court of Arkansas was rendered October 13, 1980. That Court entered final judgment upon denying rehearing November 10, 1980, a

copy of which appears in Appendix "C". The jurisdiction of the United States is involved under 28 U.S.C. 1257 (3).

QUESTION PRESENTED

1. Whether in absence of exigent circumstances the warrantless, non-consensual entry into a person's home for the purpose of arresting him violates his Fourth and Fourteenth Amendment rights and compel him to stand trial.

CONSTITUTIONAL PROVISIONS INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or thing to be seized.

UNITED STATES CONSTITUTION, AMENDMENT XIV, SECTION 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its' jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On January 3, 1980, four youths, of which one was alleged to have been armed with a .22 caliber rifle and another with a pistol, took control over property in excess of $100.00 from Steven Benson. Several hours later, the police arrested a subject who gave a statement naming the Petitioner and two others as being the participants in the alleged crime.

At approximately 6:30 p.m. on January 5, 1980, officers of the Little Rock Police Department went to the home of the Petitioner without a warrant of arrest and without the consent of the Petitioner or his mother, entered the home and arrested the Petitioner.

Seventeen days later, on January 22, 1980, an Information was filed by the Prosecuting Attorney for the Sixth Judicial District charging the Petitioner with aggravated robbery, attempted capital felony murder and theft of property in excess of $100.00 alleged to have been committed on January 3, 1980.

On May 2, 1980, Petitioner filed a Motion to Dismiss on the grounds that he was arrested in his home without a warrant of arrest in violation of his rights under the Constitution of the United States and the State of Arkansas. On May 7, 1980, after a hearing in which both sides presented testimony, the trial court granted the Motion to Dismiss. The State appealed this decision to the Supreme Court of Arkansas which reversed the trial court and held that the Petitioner must stand trial even if the arrest was illegal. It is from this decision that the Petitioner brings this Petition For Certiorari.

REASON FOR GRANTING THE PETITION FOR A WRIT OF CERTIORARI

I. THE DECISION OF THE ARKANSAS SUPREME COURT THAT A CITIZEN MUST STAND TRIAL EVEN THOUGH HE WAS ILLEGALLY ARRESTED IN HIS HOME WITHOUT A WARRANT OF ARREST IN ABSENCE OF EXIGENT CIRCUMSTANCES, FINGERPRINTED AND PHOTOGRAPHED FOR THE PURPOSE OF COMPLETING THE INVESTIGATION BY THE OFFICERS, VIOLATED THE CITIZEN'S RIGHTS UNDER THE CONSTITUTION OF THE UNITED STATES.

Petitioner respectfully submits that the Supreme Court of Arkansas erred in reversing the decision of the trial court to dismiss the charges against Petitioner.

While investigating an aggravated robbery case, members of the Little Rock Police Department arrested a Mr. Timothy Gomillion at approximately 10:00 p.m. on January 3, 1980. Gomillion made a statement implicating the Petitioner. On January 5, 1980, at approximately 6:30 p.m., Officer Jones went to Petitioner's home and asked to see him. Officer Jones stated that Petitioner's mother opened the door and invited him in. (R. 73-74)

Officer Jones stated that he arrested the Petitioner at 6:30 p. m. on the fifth, and then eighteen minutes later, at 6:48, read him his rights and photographed him at 6:48 p.m. A photo line-up was held at 7:35 p.m. Officer Jones admitted that he had Petitioner's name as a suspect at 10:00 p.m. on January 3, 1980, made no attempt to secure a warrant of arrest or a search warrant before arresting him in his home at 6:30 p.m. on January 5, 1980. (R. 78-79)

Petitioner's mother, Eddie Block, testified that a man knocked on the door and asked if Charles was there, and she told him, "Yes, just a minute" and when she looked around the man had come through the living room and followed her down the hall. She said she did not tell him to come in and did not know he was behind her until she looked back. (R. 84)

The Petitioner testified that he was in his own room lying down when Mr. Jones and another officer entered without a warrant and placed handcuffs on him and took him to headquarters. (R. 98)

On April 2, 1980, Petitioner filed a Motion To Suppress and a Motion To Suppress In Court Identification. (R. 14-16)

On April 29, 1980, a hearing was held on Petitioner's Motion To Suppress and Motion To Suppress In Court Identification. (R. 29-71) At the hearing, the prosecuting witness testified that Officer Jones called him to come down to headquarters as he thought he might have one of them in custody. The officer had six photographs laid out on a desk and he picked Petitioner's picture out. (R. 58-59) The trial court overruled the Motions To Suppress. (R. 69)

The opinion of the Arkansas Supreme Court in reversing the trial court cited the case of *U.S. v. Crews*, 100 S.Ct. 1244 (1980) and quoted Footnote 34: "The issue is not whether a defendant must stand trial, because he must do so even if the arrest is illegal. In the present case no identification was made until after the Petitioner had been illegally arrested, while in the *Crews* case, supra, the respondent was taken into custody because he was a suspected truant. He was transported to Park Police

headquarters, where the police briefly questioned him, obtained the desired photograph, telephoned his school, and released him. He was never formally arrested or charged with an offense connected with his being taken into custody.

In *Payton v. New York* and *Reddick v. New York*, 445 U.S. 573, 100 S.Ct. 1371 (1980) this Court held:

> "The Fourth Amendment, made applicable to the States by the Fourteenth Amendment, prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest."

In *U.S. v. Reed*, 572 F.2d 412 (CA 2 1977) cert. den. 439 U.S. 913, it was stated on page 423:

> "To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is clearly present."

In the present case, it must be remembered that the officers had the information they acted upon for two days before arresting the Petitioner in his home without an arrest warrant. They offered no testimony of exigent circumstances. There was nothing to prevent them during the two day interval from presenting their evidence to a magistrate and request a warrant of arrest.

In the case of *U.S. v. Houle*, 603 F.2d 1297, decided by the 8th Circuit Court of Appeals on August 17, 1979, the Court vacated the judgment of the district court's

conviction of a defendant arrested in his home without a warrant and held that warrantless arrest of a defendant in his home was not justified on theory of exigent circumstances, where officers deliberately delayed four hours before going to defendant's home, indicating that they did not believe defendant would attempt to escape or destroy evidence, officers made no attempt to obtain search or arrest warrant, exigency arising from rifle near bed on which defendant was sleeping could not have been anticipated by officers and did not excuse their earlier failure to obtain warrant, and seizure of rifle by officers, who reached it through broken window, disposed of any justification officers might have had for kicking down door and entering room, since they had seized the only visible weapon.

In the recent case of *Haynes v. State*, 269 Ark. 506, 602 S.W.2d 599 (1980), cert. den. 12/15/80, it was stated:

> "x x x We have always construed the Fourth Amendment to prohibit entry into one's home, without a warrant, for any reason; except, exigent circumstances have been determined to allow a warrantless intrusion. Absent exigent circumstances, such an intrusion is not permitted. *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371 (1980) x x x Using an old cliche, a man's home is his castle; and, it should be free from intrusion by outsiders, including the government and its officers. The United States Supreme Court has confirmed the statement that illegal entry into a person's home is the chief evil guarded against by the Fourth Amendment. *United States v. United States District Court*, 407 U.S. 297 (1972); *McDonald v. United States*, 335 U.S. 451 (1948).

The primary interest protected by the Fourth Amendment has always been the privacy of the home.

Accordingly, the decisions of this Court have long afforded the most stringent protection to the sanctity of private dwellings. The paramount significance of the home in our Constitutional scheme is due to the various meanings the home has for our citizenry. Not only is it a fundamental property interest but, as the center of the personal life of the individual, it is the place in which legitimate expectations of privacy are the highest.

The warrant requirement is essential to the protection of the substantial privacy interests affected by arrest entries and is as important here as in the search context. Because police possess exceptionally wide discretion as to whether, when and where an arrest should be made, a power that has been abused, an arrest warrant issued by a neutral magistrate prior to entry into a home reduces the opportunity for police errors or excesses. The warrant limits and delineates the scope of the permissible intrusion and reduces the frequency with which hindsight may affect the evaluation of the reasonableness of the entry. The warrant also protects against otherwise irreparable deprivations of constitutional rights due to erroneous police judgments.

Additionally, the warrant requirement, in the limited circumstance of arrests within the home, imposes no undue burden on law enforcement. It does not limit the power to arrest without a warrant when there are exigent circumstances. On the other hand, where immediate action is not necessary, as is true of a substantial number of arrests, the additional brief delay to obtain a warrant is unconsequential. When measured against the seriousness of the intrusion to privacy within the home, law enforcement interests in being free of the warrant requirement are unsubstantial.

Unlike the situation in *United States v. Watson*, 423 U.S. 411 (1976), where the common law concerning warrantless public arrests was exceptionally clear, the common law as to arrests within the home is far less certain and many authorities require warrants for entries to arrest. At the time of the framing of the Constitution, common law authorities were in disagreement as to the actual rule and nineteenth centuries remain divided. Significantly, once modern courts, both federal and state, considered the issue in the context of Fourth Amendment principles, they concluded overwhelmingly that a warrant is required. Consequently, the history of the common law of arrest provides no guidance in this instance to the proper construction of the Fourth Amendment.

The arrest in *Crews*, supra, and *Watson*, supra, were warrantless and made in public places while the arrests in *Payton* and *Reddick*, supra, were warrantless and made in the subjects homes as was done in the present case.

CONCLUSION

For the above and foregoing reasons, it is respectfully submitted that the Petition For A Writ of Certiorari should be granted.

Respectfully submitted,

HAROLD L. HALL
300 Spring Building - Suite 415
Little Rock, Arkansas 72201
(501) 372-4885

Attorney for Petitioner

APPENDIX "A"

SUPREME COURT OF ARKANSAS
NO. CR 80-153
Opinion Delivered October 13, 1980

STATE OF ARKANSAS,

Appellant, Appeal from Pulaski
V. Circuit Court; Floyd
Lofton, Judge

CHARLES E. BLOCK,

Appellee. Reversed.

GEORGE ROSE SMITH,
Associate Justice

GEORGE ROSE SMITH, J. On January 3, 1980, a robbery occurred in Little Rock. That night the police arrested a suspect who made a statement implicating the appellee, Charles E. Block. Two nights later an officer went to Block's home, without an arrest warrant, and arrested him. Block was charged by information with aggravated robbery, criminal attempt to commit capital murder, and theft of property.

The trial court, acting upon a pretrial motion to dismiss the charges, conducted a hearing on the validity of Block's arrest. On conflicting testimony the court found the arrest illegal, because when Block's mother opened the door in response to the officer's knock, the officer entered the house without an invitation and arrested Block. The trial

judge, relying solely upon the Supreme Court's holding in *Payton v. New York*, decided last April, dismissed the charges on account of the illegal arrest. *Payton v. New York*, 100 S.Ct. 1371 (1980).

The State took an appeal to this court, under Rule 29 (1) (k), on the erroneous assumption that this is an interlocutory appeal. Of course it is not, an order of dismissal being final. The State's procedure, however, complies with Criminal Procedure Rule 36.10 (b) and (c), and we have retained jurisdiction because the case presents an issue of significant public interest or a legal principle of major importance. Rule 29 (4) (b).

The trial judge manifestly misinterpreted the Supreme Court's holding in *Payton*. It is unthinkable that a person who has committed murder, for example, should go scot free just because an officer enters his home without an invitation and arrests him without a warrant. The law is just the opposite. *United States v. Crews*, 100 S.Ct. 1244 (1980); *Gerstein v. Pugh*, 420 U.S. 103 (1975); *Singleton v. State*, 256 Ark. 756, 510 S.W.2d 283 (1974). In the *Payton* case the court merely held that evidence is not admissible when it was obtained by an officer's illegal entry into a person's home without an arrest warrant. There was no hint that the charges should be dismissed. Quite the contrary, the court specifically stated in Footnote 34: "The issue is not whether a defendant must stand trial, because he must do so even if the arrest is illegal."

The judgment is reversed, and Block not yet having been in jeopardy, the cause is remanded for trial.

APPENDIX "B"

IN THE SUPREME COURT OF ARKANSAS

STATE OF ARKANSAS APPELLANT

VS. CR-80-153

CHARLES E. BLOCK APPELLEE

PETITION FOR REHEARING

Comes now the Appellee, Charles E. Block, and respectfully petitions the Court to grant a rehearing of its decision of October 13, 1980, and affirm the judgment of the lower Court, and for grounds for his Petition does respectfully assert the following errors of fact and law contained in its opinion of October 13, 1980.

I.

The opinion of this Court overlooks the fact that the officers had the information it relied upon to enter Appellee's home for two days before entering his home and arresting him without a warrant of arrest. There was no exigent circumstances and nothing to prevent the officers from securing a warrant of arrest. The Fourth and Fourteenth Amendments to the Constitution of the United States guaranteed the right of the people to be secure in their persons and houses against unreasonable searches and seizures. These Amendments were enacted to protect the citizens from such warrantless arrests as in the present case.

The Supreme Court of the United States in the *Payton v. New York* and *Riddick v. New York*, 100 S.Ct. 1371 was aware of its decision in *United States v. Crews*, 100 S.Ct. 1244 as it was decided three weeks later.

Under the opinion of this Court in the present case, no citizen is protected by the Fourth and Fourteenth Amendments from warrantless arrests and seizures in his own home if the officers can ignore the requirement to secure a warrant before entering and arresting him when they have sufficient time to do so and no exigent circumstances exits. It is questionable that the old saying "A man's home is his castle" still exists.

WHEREFORE, Appellee prays that said appeal be reheard by this Court, that upon such rehearing, this Court reverse its opinion of October 13, 1980, and affirm the decision of the Pulaski Circuit Court.

Respectfully submitted,

/s/ Harold L. Hall
HAROLD L. HALL
Suite 415 - 300 Spring Building
Little Rock, Arkansas 72201

Attorney for Appellee

CERTIFICATE

Comes Harold L. Hall, attorney for Appellee, Charles E. Block, and states that the above and foregoing Petition for Rehearing is not filed for the purpose of delay and it is his belief that there is merit in the Petition.

/s/ Harold L. Hall
HAROLD L. HALL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition has been served upon Mr. Joe Purvis, Office of the Attorney General, Justice Building, Little Rock, Arkansas, this 28th day of October, 1980.

/s/ Harold L. Hall
HAROLD L. HALL

APPENDIX "C"

LAW OR CHANCERY MANDATE

STATE OF ARKANSAS,)
(SCT.
In the Supreme Court)

BE IT REMEMBERED, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court Room in the City of Little Rock, on the 6th day, being the first Monday of October, A.D. 1980, amongst others were the following proceedings, to-wit:

On the 10th day of November, A.D. 1980, a day of said term_____

STATE OF ARKANSAS
Appellant

Appeal from Pulaski Circuit Court

No. CR 80-153 vs.
CHARLES E. BLOCK
Appellee

District

Petition for Rehearing denied.

IN TESTIMONY, That the above is a true copy of the order of said Supreme Court, rendered in the case therein stated, I, Dona L. Williams, Clerk of said Supreme Court, hereunto set my hand and affix the Seal of said Supreme Court, at my office in the city of Little Rock, this 30th day of December, A.D. 1980.

DONA L. WILLIAMS
CLERK

By: /s/ Robin Henderson
D.C.

APPENDIX "D"

IN THE SUPREME COURT OF ARKANSAS

STATE OF ARKANSAS APPELLANT

VS. NO. CR-80-153

CHARLES E. BLOCK APPELLEE

NOTICE OF PETITION
FOR WRIT OF CERTIORARI

Comes the Appellee, Charles E. Block, and files this notice of his Petition For Writ of Certiorari of the decision of this Court reversing the Pulaski Circuit Court and denying his Petition For Rehearing on November 10, 1980.

WHEREFORE, Appellee prays a Writ Of Certiorari to the Supreme Court of the United States.

Respectfully submitted,

/s/ Harold L. Hall
HAROLD L. HALL
Suite 415 - 300 Spring Building
Little Rock, Arkansas 72201

Attorney for Appellee

CERTIFICATE OF SERVICE

I, Harold L. Hall, attorney for Appellee, hereby certify that I have served a copy of the above and foregoing Petition For Writ Of Certiorari on the Honorable Steve Clark, Attorney General, Justice Building, Little Rock, Arkansas, on this 10th day of November, 1980.

/s/ Harold L. Hall
HAROLD L. HALL

Filed November 10, 1980
Dona L. Williams, Clerk

NO. 80-1176

APR 8 1981
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1980

CHARLES E. BLOCK,

Petitioner,

VS.

STATE OF ARKANSAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

STEVE CLARK
Attorney General of Arkansas

By: JACK W. DICKERSON
Assistant Attorney General
Justice Building
Little Rock, Arkansas 72201
(501) 371-2007

Attorneys for Respondent

P.C.—B-123 45 COPIES

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1980

NO. 80-1176

CHARLES E. BLOCK,

Petitioner,

VS.

STATE OF ARKANSAS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENT
IN OPPOSITION TO PETITION

QUESTION PRESENTED FOR REVIEW

WHETHER A DEFENDANT, PROPERLY CHARGED WITH A CRIMINAL OFFENSE, MAY BE TRIED FOR THAT OFFENSE NOTWITHSTANDING THE ILLEGALITY OF HIS ARREST.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iii

OPINION BELOW iv

JURISDICTIONAL GROUNDS iv

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED iv

STATEMENT OF THE CASE v

REASON(S) FOR DENYING THE WRIT 1

CONCLUSION 8

TABLE OF AUTHORITIES

CASES: Page

Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971) 1

Davis v. Mississippi, 394 U.S. 72 (1969) 5

Gerstein v. Pugh, 420 U.S. 103, 955 S.Ct. 854, 43 L.Ed.2d 54 (1975) 1, 3

Jones v. United States, 357 U.S. 493, 78 S.Ct. 1253, 2 L.Ed.2d 1514 (1958) 1

Payton and Riddick v. New York, —— U.S. ——, 63 L.Ed.2d 639, 100 S.Ct. —— (1980) ..... v, 1, 7

United States v. Blue, 284 U.S. 251, 86 S.Ct. 1416, 16 L.Ed.2d 510 (1966) 2

United States v. Crews, —— U.S. ——, 63 L.Ed.2d 534 (1980) 3, 5

United States v. Reed, 572 F.2d 412 (2nd Cir. 1978) vi

United States v. Santana, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976) 1

United States v. Watson, 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976) 1

MISCELLANEOUS:

Rules of the Supreme Court of the United States effective June 30, 1980, Rule 17 1

OPINION BELOW

The opinion of the Arkansas Supreme Court is found at 270 Ark. 671, 606 SW2d 362 (1980), and is reproduced in the appendix to the Petition for Writ of Certiorari at page 11.

JURISDICTION

The petitioner relies upon 28 U.S.C. §1257(3) as the basis of this Court's jurisdiction.

CONSTITUTIONAL PROVISIONS INVOLVED

The petition has adequately set forth the constitutional provisions involved.

STATEMENT OF THE CASE

On January 3, 1980, Officer Ivan Jones of the Little Rock Police Department investigated an aggravated robbery which had occurred that evening at the Raintree Apartments. He had a conversation with a suspect, Timothy Gomillion, regarding the robbery and Gomillion was subsequently arrested. Gomillion gave officer Jones a statement which implicated the petitioner, Charles E. Block. No further arrests were made the night of the incident. Two days later, on January 5, 1980, at about 6:30 p.m., Officers Jones and Garner went to the home of Charles Block, the petitioner, to arrest him. The officers did not have an arrest warrant.

After Block was arrested, he was read his rights and photographed. A photo line up was held about 7:35 p.m. that same evening. Block did not make a statement and there was no search of his home at the time of the arrest.

Prior to trial defense counsel filed a motion to suppress an in-court identification. A hearing was held on this motion April 29, 1980, and the Court denied the motion. Defense counsel also filed a motion to dismiss wherein he moved that the court dismiss the charges alleged in the information against Charles Block. He contended that: 1) He was arrested in his home without a warrant. 2) The officers had sufficient time to secure a warrant of arrest from a magistrate before arresting him in his home. 3) The arrest violated his rights under the Fourth and Fourteenth Amendments of the Constitution.

A brief was filed in support of this motion referring the trial court to United States Supreme Court decisions; *Payton and Riddick v. New York*, 27 CrL 3033 (April 15,

1980) and *United States v. Reed,* 572 F.2d 412 (2nd Cir. 1978). The brief quoted general constitutional language from the opinions but did not specifically discuss the propriety of dismissal as the proper remedy in cases of an arrest in a home absent an arrest warrant.

The State filed its response claiming that: 1) The defense motion, which is based on *Payton v. New York,* April 15, 1980, asks for a remedy which is not available. 2) *Payton v. New York,* involved the application of the exclusionary rule to evidence seized when Police Officers entered a residence to make an arrest without an arrest warrant. 3) The United States Supreme Court in *Payton v. New York* explicitly held in footnote 34 that a defendant must stand trial even if the arrest is illegal.

The trial court dismissed the charges against petitioner and that decision was reversed on appeal.

REASONS FOR DENYING THE WRIT

It is noted in Rule 17 of the Rules of the Supreme Court that review on a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The Rule goes on to say that this Court's discretion may be exercised where a state supreme court's ruling is inconsistent or in conflict with a ruling of the federal courts. No such inconsistency is present here.

While the United States Supreme Court has approved warrantless arrests in public places upon probable cause, *United States v. Watson,* 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed. 2d 598 (1976), prior to the *Payton* case it had reserved ruling on the propriety of such arrests in private dwellings. See, in this regard, *United States v. Santana,* 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976); *United States v. Watson,* supra; *Gerstein v. Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975); *Coolidge v. New Hampshire,* 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); *Jones v. United States,* 357 U.S. 493, 78 S.Ct. 1253, 2 L.Ed.2d 1514 (1958).

As a general rule, the concern of the Court has not been the validity of the warrantless arrest itself. Rather the fear has been that a warrantless arrest might be used as a subterfuge to seize, and then use at trial, evidence which may not have been secured by legal search and seizure procedure.

For example Mr. Justices Marshall and Brennan made the following comment in dissenting from the decision in *Santana, supra,* upholding the admissibility of evidence seized from Santana pursuant to her warrantless arrest while standing in the threshold of her home:

> While a police decision that the time is right to arrest a suspect should properly be given great deference, cf. *Hoffa v. United States,* 385 U.S. 293, 310, 17 L.Ed.2d 374, 87 S.Ct. 408 (1966), the power to arrest is an awesome one and is subject to abuse. An arrest may permit a search of premises incident to the arrest, a search that otherwise could be carried out only upon probable cause and pursuant to a search warrant. Likewise, an arrest in circumstances such as those presented here may create exigency that may justify a search or another arrest. When an arrest is so timed that it is no more than an attempt to circumvent the warrant requirement, I would hold the subsequent arrest or search unlawful.

427 U.S. 48, 49. There was no intimation by any member of the Court, here or in subsequent cases, that a warrantless arrest would result in the drastic remedy of dismissal of charges.

In *United States v. Blue,* 234 U.S. 251, 86 S.Ct. 1416, 16 L.Ed.2d 510 (1966) the Court stated the following on the subject:

> "While the general common-law practice is to admit evidence despite its illegal origins, this Court in a number of areas has recognized or developed exclusionary rules where evidence has been gained in violation of the accused's rights under the Constitution, federal statutes, or federal rules of procedure. *Weeks v. United States,* 232 U.S. 383, 58 L.Ed. 652, 34 S.Ct. 341, LRA 1915B 834; *Rogers v. Richmond,* 365 U.S. 534, 5 L.Ed.2d 760, 81 S.Ct. 735; *Mapp v. Ohio,* 367 U.S. 643, 6 L.Ed.2d 1081, 81 S.Ct.

> 1684, 84 ALR2d 933; *Nardone v. United States,* 308 U.S. 338, 84 L.Ed. 307, 60 S.Ct. 266; *Mallory v. United States,* 354 U.S. 449, 1 L.Ed.2d 1479, 77 S.Ct. 1356. Our numerous precedents ordering the exclusion of such illegally obtained evidence *assume implicitly that the remedy does not extend to barring the prosecution altogether. So drastic a step might advance marginally some of the ends served by exclusionary rules, but it would also increase to an intolerable degree interference with the public interest in having the guilty brought to book."* [Emphasis added]

In *Gerstein v. Pugh,* 420 U.S. 103, 119, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975) the Court made the following comments on this same subject:

> *"Nor do we retreat from the established rule that illegal arrest or detention does not void a subsequent conviction. Frisbie v. Collins,* 342 U.S. 519, 96 L.Ed. 541, 72 S.Ct. 509 (1952); *Ker v. Illinois,* 119 U.S. 436, 30 L.Ed. 421, 7 S.Ct. 225 (1886)." [Emphasis added]

In other words, an illegal arrest, without more, does not bar subsequent prosecution, nor is it a defense to a valid conviction. Thus, the illegality of petitioner's original detention does not deprive the government of the opportunity to prove his guilt through introduction of evidence wholly untainted by police misconduct.

In the *United States v. Crews,* 63 L.Ed.2d 537 (March 25, 1980) the Court was faced with the issue of whether the in-court identification of the accused should be suppressed as the fruit of the defendant's unlawful arrest.

In that case, three women (in two separate incidents) reported to the police that they had been accosted and robbed by a black male youth in the women's restroom on the grounds of the Washington Monument. Each victim gave a similar, detailed, description of their assailant.

Within a week of the robberies law enforcement officials observed Crews around the area of the restrooms. Since Crews matched the description of the robber and since he had been observed in the area earlier, the officers detained him and attempted to take a Polaroid photograph of his face. Their efforts were frustrated by inclement weather. Crews was therefore taken into custody as a suspected truant and was photographed at police headquarters.

Subsequently one of the robbery victims positively identified Crew's photograph and he was indicted for robbery. Crews filed a pretrial motion to suppress all identification by his victims contending that his detention on the truancy charges was merely a ruse to allow the officers to obtain further evidence for their robbery investigation.

The trial court ruled that the products of the arrest — the photograph identification and a subsequent line-up identification — would be suppressed, but that an independent courtroom identification would be allowed. Upon conviction, Crews appealed contending that the in-court identification should likewise have been suppressed.

On the issue now before this Court, the Court stated:

> "Insofar as respondent challenges his own presence at trial, he cannot claim immunity from prosecution simply because his appearance in court was precipitated by an unlawful arrest. *Respondent*

> *is not himself a suppressible 'fruit' and the illegality of his detention cannot deprive the Government of the opportunity to prove his guilt through introduction of evidence wholly untainted by the police misconduct. Gerstein v. Pugh,* 420 U.S. 103, 119, 43 L.Ed.2d 54, 95 S.Ct. 854 (1975); *Frisbie v. Collins,* 342 U.S. 519, 96 L.Ed.2d 541, 72 S.Ct. 509 (1952); *Ker v. Illionis,* 119 U.S. 436, 30 L.Ed.2d 421, 7 S.Ct. 225 (1886)."

[Emphasis added] 63 L.Ed.2d 547.

The Court then addressed the issue of whether or not Crew's person was in fact evidence which could be suppressed at trial by not requiring his presence while the victims testified (as opposed to precluding prosecution). 63 L.Ed.2d at 548. Citing *Davis v. Mississippi,* 394 U.S. 721 (1969) the Court implied that a defendant's identification could be suppressed if, but for the illegal activity of the police, that identification would never have been made. 63 L.Ed.2d 549.

A majority of the court agreed with the outcome of the *Crews* decision yet felt compelled to respond to the dicta stated by the Court.

Mr. Justices Blackman and Powell noted:

> I join the Court's opinion except for Part II-D. I would reject explicitly, rather than appear to leave open, the claim that a defendant's face can be a suppressible fruit of an illegal arrest. I agree with Mr. Justice White's view, post, at ——, 63 L.Ed.2d 550, that this claim is foreclosed by the rationale of *Frisbie v. Collins,* 342 U.S. 519, 96 L.Ed. 541, 72 S.Ct. 509 (1952), and *Ker v. Illinois,* 119 U.S. 436, 30 L.

> Ed. 421, 7 S.Ct. 225 (1886). Those cases established that *a defendant properly may be brought into court for trial even though he was arrested illegally*. Thus, the only evidence at issue in this case is the robbery victims' identification testimony. I agree with the Court that the victims' testimony is not tainted.

[Emphasis added] 63 L.Ed.2d 549, 550.

Mr. Justice White, with whom Mr. Chief Justice Burger and Mr. Justice Rehnquist join in concurring, stated:

> The Court today holds that an in-court identification of the accused by the victim of a crime should not be suppressed as the fruit of the defendant's unlawful arrest. Although we are unanimous in reaching this result, Mr. Justice Brennan's opinion reserves the question whether a defendant's face can ever be considered evidence suppressible as the "fruit" of an illegal arrest. Because I consider this question to be controlled by the rationale of *Frisbie v. Collins*, 342 U.S. 519, 96 L.Ed. 541, 72 S.Ct. 509 (1952), I write separately.
>
> Respondent Crews was convicted after an in-court identification by the victim whose own presence at trial, recollection and identification the Court holds were untainted by prior illegal conduct by the police. Under these circumstances the manner in which the defendant's presence at trial was obtained is irrelevant to the admissibility of the in-court identification. We held in *Frisbie v. Collins*, supra, at 522, 96 L.Ed. 541, 72 S.Ct. 509, "that the power of a court to try a person for crime is

not impaired by the fact that he has been brought within the court's jurisdiction" unlawfully. *A holding that a defendant's face can be considered evidence suppressible for no reason other than that the defendant's presence in the courtroom is the fruit of an illegal arrest would be tantamount to holding that an illegal arrest effectively insulates one from conviction for any crime where an in-court identification is essential.* Such a holding would be inconsistent with the underlying rationale of *Frisbie* from which we have not retreated. *Stone v. Powell*, 428 U.S. 465, 485, 49 L.Ed.2d 1067, 96 S.Ct. 3037 (1976); *Gerstein v. Pugh*, 420 U.S. 103, 119, 43 L.Ed.2d 54, 95 S.Ct. 854 (1975).

* * *

Because Mr. Justice Brennan leaves open the question whether a defendant's face can be considered a suppressible fruit of an illegal arrest, a question I think has already been sufficiently answered in *Frisbie*, I cannot join his opinion, although I concur in the result. *I note that a majority of the Court agrees that the rationale of Frisbie forecloses the claim that respondent's face can be suppressible as a fruit of the unlawful arrest.*

[Emphasis added] 63 L.Ed.2d 550, 551.

Less than three weeks later the United States Supreme Court decided the case relied on here by petitioner. In *Payton*, supra, the Court held:

— that the Fourth Amendment to the United States Constitution, made applicable to the States

> by the Fourteenth Amendment (cases cited) prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest.

63 L.Ed.2d 644. The Court then stated that:

> In these cases, which involve application of the exclusionary rule, the issue is whether certain evidence is admissible at trial.

In a footnote to that statement the Court specifically held:

> *The issue is not whether a defendant must stand trial, because he must do so even if his arrest is illegal.* (Citing Crews, supra).

[Emphasis added] 63 L.Ed.2d 654.

CONCLUSION

This Court need not grant certiorari to reconsider its recent holding and ruling on the present issue. No conflict exists.

Respectfully submitted,

STEVE CLARK
Attorney General of Arkansas

By: JACK W. DICKERSON
Assistant Attorney General
Justice Building
Little Rock, Arkansas 72201
(501) 371-2007

Attorneys for Respondent